# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 8178 of 1997

**For Approval and Signature:**

**HONOURABLE MS.JUSTICE H.N.DEVANI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**MOTIBHAI SHANABHAI RATHOD & 1 - Petitioner(s)**

**Versus**

**AMRUTLAL AMBALAL BHATT & 2 - Respondent(s)**

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**Appearance :**

MR HM PARIKH for Petitioner(s) : 1 - 2.
MR BG PATEL for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
MR RM CHAUHAN, AGP for Respondent(s) : 3,

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**CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI**

**Date : 02/03/2006**

**ORAL JUDGMENT**

1.Heard, learned Advocates Mr.H.M.Parikh and Mr.B.G.Patel for the petitioner and respondent

No.1 respectively and Mr.R.M.Chauhan, learned Assistant Government Pleader for the respondent No.3.

2.Mr.B.G.Patel, the learned advocate for the respondent No.1, states that the petitioner No.1 – Motibhai Shanabhai Rathod has expired on 14th June, 1999. That, an application had been preferred for bringing the heirs and legal representatives of the deceased – Motibhai Shanabhai Rathod being Civil Application No.13678 of 1999, which has been rejected by this Court. Mr.H.M.Parikh, learned Advocate for the petitioners does not dispute the aforesaid position. In the circumstances, it is held that the petition abates insofar as the petitioner No.1 is concerned. The Sarpanch, Traj Gram Panchayat, original petitioner No.2, is now the sole petitioner.

3.The facts of the case, stated briefly, are

that, by a notice dated 23rd October, 1986, the petitioner, Gram Panchayat had called upon the respondent No.1 to remove the encroachment made by him on the land forming part of a public road (hereinafter referred to as “the disputed land).

4.Being aggrieved by the aforesaid notice, the respondent No.1 instituted proceedings before the Civil Judge (J.D.), at Kheda being Regular Civil Suit No.283 of 1986, seeking an injunction restraining the Panchayat from removing the encroachment made by him. By an order dated 13rd May, 1987, the learned Civil Judge dismissed the application exhibit 5 moved by respondent No.1. Thereafter, the Panchayat passed a resolution being resolution No.224 for removal of the said encroachment and pursuant thereto, the encroachment was removed.

5.It appears that, subsequently, the original

petitioner No.1 – deceased Motibhai Shanabhai Rathod and others had instituted a suit before the Civil Judge (J.D.), at Kheda, being Civil Suit No.1 of 1989, seeking relief to the effect that the Traj Gram Panchayat be restrained from in any manner transferring the property described in the prayer clause which forms part of the public road. In the said proceedings, a settlement was arrived at between the plaintiffs and the defendant Traj Gram Panchayat, wherein it was agreed that the disputed lands forming part of the public road would be kept vacant for all times to come.

6.By a resolution dated 28th September 1992, being resolution No.276 passed by the petitioner Gram Panchayat, the respondent No.1 was permitted to carry out construction on the disputed land. Being aggrieved by the aforesaid resolution passed by the petitioner Gram Panchayat, the original petitioner No.1 preferred an appeal

before the Appeal Committee, Kheda District Panchayat being Appeal No.52 of 1992. By an order dated 2nd June, 1993, the Appeal Committee allowed the appeal, and quashed and set aside the resolution dated 28th September, 1992 passed by the Traj Gram Panchayat.

7. The respondent No.1 carried the order of the Appeal Committee in revision before the State Government under the provisions of Section 259 of the Gujarat Panchayats Act, 1993 (the Act).

8. By an order dated 29th September 1997 passed by the Deputy Secretary, Panchayats, Rural & Housing Development, the revision application was allowed. The order dated 2nd June, 1993, passed by the Appeal Committee, Kheda District Panchayat was quashed and set aside, and the resolution dated 28th September 1992 passed by the Traj Gram Panchayat was confirmed.

9.It is this order of the State Government that is subject matter of challenge in the present petition.

10.Mr.B.G.Patel, the learned advocate for the respondent No.1 has raised a preliminary objection to the very maintainability of the petition on the ground that the petition has abated qua the petitioner No.1, and the sole remaining petitioner, namely Sarpanch, Traj Gram Panchayat has no locus to challenge the impugned order of State Government. It was submitted that, by the impugned order dated 29th September 1997, the resolution passed by the Traj Gram Panchayat has been confirmed. In the circumstances, the Panchayat can in no manner be said to be an aggrieved party.

11.Mr.H.M.Parikh, the learned advocate for the petitioner has submitted that the resolution had been passed by the earlier body of the Gram

Panchayat; the same was passed by a majority of the members and was not a unanimous resolution. That, in the revisional proceedings, the Panchayat had supported the petitioner and had opposed the revision application. That, in the circumstances, as the revision application had been allowed, the Panchayat was an aggrieved party.

12.Mr.Parikh has also addressed the Court on the merits of the case, however, considering the view that the Court is inclined to take in the matter, it is not necessary to enter into the merits of the controversy involved in the petition.

13.As can be seen from the impugned order dated 29th September, 1997, the revisional authority has set aside the order of the Appeal Committee, Kheda District Panchayat and has confirmed the resolution No.276 dated 28th

September, 1992, passed by the Traj Gram Panchayat. The Gram Panchayat is the sole petitioner in the present petition. Once the resolution passed by the Gram Panchayat has been confirmed by the revisional authority, it is beyond comprehension as to how the Gram Panchayat can be aggrieved by the confirmation of its own resolution. If the Panchayat is not satisfied by any resolution passed by it, it is always open to the Panchayat to modify, amend, vary or cancel the same under the provisions of Section 97 of the Act.

14.The petitioner Gram Panchayat, not being an aggrieved party, is not entitled to challenge the impugned order of the State Government. In the circumstances, the present petition, at the instance of the Traj Gram Panchayat, is not maintainable.

15.In the result, the petition is rejected. Rule

is discharged. Interim relief, if any, stands vacated. There shall be no order as to costs.

[HARSHA DEVANI, J.]

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